

# Memorandum

**TO:** The Honorable Mayor and  
City Council

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Information Regarding the Civil  
Gang Injunction Process

**DATE:** June 20, 2008

The Office of Councilmember Nora Campos requested information about the process and resources required to implement a gang injunction. In addition, at the last meeting of the Mayor's Gang Prevention Task Force, the Mayor requested that civil gang injunctions be added to the strategic work plan as a means to deter gang activity.

This memorandum provides background regarding civil gang injunctions as well as the steps necessary to obtain an injunction from the court against a criminal street gang and its members.

## **BACKGROUND OF CIVIL GANG INJUNCTIONS IN THE CITY OF SAN JOSE.**

The City of San José was one of the first cities in California to obtain a civil gang injunction against a criminal street gang and some of its members. It obtained its first civil gang injunction in 1993. That civil gang injunction was challenged by a number of legal advocacy groups on behalf of some of the named gang members. It ultimately resulted in what is now the one of the most significant gang abatement decisions in California. It was decided by the California Supreme Court in a case entitled *People, ex rel. Gallo v. Acuna* (1997) 14 Cal.4<sup>th</sup> 1090. That initial gang abatement was brought against a criminal street gang creating a serious public nuisance in the Rocksprings neighborhood of San José. Since that initial gang abatement, this Office has filed and obtained civil gang injunctions on four (4) other occasions regarding other areas of the City.

## **WHAT IS A CIVIL GANG INJUNCTION?**

A civil gang injunction is the product of a civil lawsuit that is brought against a criminal street gang and specific members of that gang. The lawsuit is brought for the purpose of seeking and obtaining court orders which prohibit certain gang activity within a defined area of the City that is being harmed by the gang activity. In such a civil lawsuit, if the City Attorney's Office can demonstrate to the court that a criminal street gang has persistently engaged in a pattern of criminal or otherwise nuisance activity that is creating a public nuisance in a defined area of the City, the superior court will issue an order in the form of an injunction. The injunction is a court order requiring the gang and the individuals subject to the court order to either do or not do certain activities. The

court will prohibit or require certain activity to the extent necessary to alleviate the demonstrated public nuisance. The type of activity that can be enjoined could include activity that is otherwise considered lawful activity if it is demonstrated that enjoining the activity is necessary to alleviate the public nuisance. For example, the court can prohibit gang members from associating with other known gang members in public areas of the affect neighborhood.

### **REQUIREMENTS FOR OBTAINING A CIVIL GANG INJUNCTION.**

Bringing a civil lawsuit seeking injunctive relief against a gang requires a tremendous amount of effort and investigation by the Police Department working in conjunction with attorneys in the City Attorney's Office. In order to obtain the requested orders from the court, the City Attorney's Office is required to prove to the court that the activities of a criminal street gang constitute a public nuisance. A public nuisance is defined as anything that is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood. This must be proved to the court by "clear and convincing evidence" which is a higher than the normal "by a preponderance of the evidence" civil standard.

### **THE FOLLOWING ARE THE STEPS NECESSARY TO OBTAIN INJUNCTIVE RELIEF FROM THE COURT.**

1. Evaluation Phase.

Traditionally, the City Attorney's Office has worked with the Police Department to identify the highest crime ridden areas of the City as potential gang abatement areas. Once the focus has narrowed to one or two problem areas, an evaluation is done of the crime statistics and data to determine whether evidence exists that: (a) activity of gang members in a given area is creating a public nuisance in that area; (b) that the targeted gang fits the legal definition of a criminal street gang; and (c) that the gang and its activities in the identified area are the kind that are likely to be abated by a court order/injunction. This includes a determination of how long the gang and its activities have been affecting the particular area, i.e., is it turf based activity or is it transitory activity?

2. Evidence Gathering and Preparation Phase.

Once it has been determined that a civil gang injunction is potentially feasible regarding a specific gang for gang activity in a defined area of the City, the evidence gathering and case preparation phase is initiated.

This phase involves the gathering of evidence of the gang's criminal and nuisance activities, as well as documentation/verification of specific gang membership. This is a lengthy process. Targeted criminal gangs and their members typically have a long history of criminal gang activity. Thus, this



involves the accumulation and review of a large volume of police reports and other documents. To the extent that there are juvenile gang members, this may require seeking and obtaining court approval to access juvenile criminal records. The purpose of this evidence is to establish that the gang is a criminal street gang and to verify individual gang membership.

It is also necessary to specifically gather evidence to support a showing to the court that the gang's activities within the specific area have created a public nuisance in that area. It is necessary to establish that all or at least a significant portion of the criminal or otherwise nuisance activity occurring within the area is a result of the gang-related activity.

The evidence must be in a form that can be presented in court. This includes witness affidavits testifying to the gang's activities within the area; certified conviction records, photographs of the area demonstrating gang activity within the area, and photographs and other admissible documentary evidence demonstrating gang membership of particular individuals.

This phase also includes the preparation of the legal documents necessary to initiate the case and obtain preliminary injunctive relief from the court. The documents that must be prepared include a summons, the complaint, points and authorities in support of the request for preliminary injunctive relief, the supporting affidavits providing the testimony and evidence required to obtain the injunctive relief and a proposed preliminary injunction.

3. The Litigation Phase.

Once the legal documents are complete, the City Attorney's Office coordinates with the court to set a hearing date on the City's request for a preliminary injunction. The City then serves the legal documents on known gang members as individuals and on behalf of the gang. This must be done typically within a few days in order to give the individuals as well as the gang sufficient time to prepare for the hearing on the request for a preliminary injunction.

At the hearing on the request for preliminary injunction, the court reviews all of the documents that have been prepared by the City Attorney's Office, any evidence presented by the gang or its members, and hears arguments from the parties to decide whether the evidence is sufficient to issue an injunction. The gang members have an opportunity to appear and be heard by the court. If the court grants the preliminary injunction, it is then served on each involved gang member to make sure that they are properly put on notice of the court order. A violation of the injunction is a misdemeanor that can be prosecuted criminally. In the past, we have coordinated with the District Attorney's Office and received its assurance of prosecuting violations of the gang injunctions as a criminal matter.

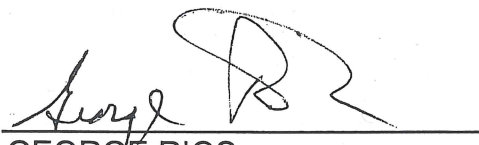
4. Time Estimate Necessary to Obtain a Civil Gang Injunction.

The past civil injunctions obtained by the City have taken approximately six (6) months from the beginning of the evidence-gathering phase to obtaining the preliminary injunction.

**CONCLUSION.**

A civil gang abatement is an important tool that can be used to abate gang activities within a specific area of the City that have created a public nuisance in that area. It does involve a significant amount of time and resources from the Police Department and the City Attorney's Office to gather evidence and prepare necessary court documents in order to obtain the court ordered injunction.

RICHARD DOYLE  
City Attorney

By   
GEORGE RIOS  
Assistant City Attorney

cc: Debra Figone  
Norberto Dueñas